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A MOVEMENT IN ENGLISH LEGAL EDUCATION.

ENGLISH law is the parent of the law of this country, almost as much as English speech is the foundation of our speech. After one hundred and twenty years of separate government our laws and our language still acknowledge, not British dominion, but the potent influence of usage and systems kindred with our own, prevailing and developing among a people bound more closely to ours than any other, by the ties of the past and of the future, by sentiment and origin no less than by material interests. We have, as a nation, adhered strongly to the English type of law even in statutes and codes. We have felt an unswerving attachment to the jury system, and to trial in criminal cases before a judge who sits as an "impartial umpire" between the State and the accused. We have never sympathized with the continental method of prosecution which Sir James Fitz James Stephen called "inquisitorial," as compared with the English "litigious" system. Numbers of our earliest lawyers studied in the English Inns of Court. Edward Tilghman, Edward Shippen, Benjamin Chew, and William Rawle had studied in the Middle Temple, and Andrew Hamilton is believed to have studied in Gray's Inn. The bar of this country must trace its "apostolic succession," like the historical churches, through English channels. In considering legal education in England we consider a training which very directly affects us, and which our methods have in late years largely influenced. An English decision is as much an authority before our State courts as a decision from a sister Commonwealth within the republic, and our Federal courts give even greater heed to it. The training which forms the bench and bar of England, therefore, is of more than speculative interest to us. Moreover, a man serves his home best who seeks to bring to it all that is best in the rest of the world, and a constant observation upon the progress of other nations is a test and condition of advancement in our own. We will say, with Sir Frederick Pollock, "*Benedictus qui venit in nomine Legum Angliæ.*"

We are not disposed, however, to recount the old story of how an unsuccessful barrister, in the middle of the last century, began at

Oxford a course of lectures on English law, not for law students, but for country gentlemen and general scholars, which attracted at once the attention of King and people, brought their author sudden rank, fame, and fortune, and when published as Blackstone's Commentaries became as much the accepted compendium of law in this country as in their own. Nor are we here to discuss the picturesque anachronisms of the Inns of Court, to tell how an official was wont to call the students in Norman French to the daily feasting, or of the social license and legal and political conservatism of these ancient and inscrutable bodies.

Venerable semi-monastic foundations as they are, they have the traditions of having been great schools of law with learned moots and wrangles, and they have had readers, so called, who gave readings on the law in their solemn halls. They alone have for centuries had the power to call to the bar, and they still maintain that uncontrolled authority.

But, if we may trust Mr. Montagu Crackanthorpe, who is by every one quoted as the best authority on legal education in England, in his testimony given in 1892 before the Gresham Commission, although it had been a moral duty, if not a legal duty, on the part of all of the Inns, and a legal duty on the part of the two greater ones, the Middle and the Inner Temples, to educate law students, at least from the time of the charter of James I., yet nothing except the delivery of a few sporadic lectures was done until 1832.

At a meeting of the Hardwicke Society in the Inner Temple Lecture Hall, December 4, 1896, Mr. C. Cavanagh quoted the Letters Patent under which the Middle and Inner Temple acquired most of their property, issued the 13th of August in the sixth year of James I. unto Sir Julius Cæsar, then Chancellor and Under Treasurer of the King's Exchequer, and others, granting them the mansions with the gardens and appurtenances therein described "for lodgings, reception, and education of the professors and students of the laws of this realm." And Mr. Cavanagh declared, "This beyond all question is a trust."

The solicitors had been as free of the Inns of Court as the barristers until about the middle of the sixteenth century, when they were banished and left without any share therein. So about the beginning of this century they were absolutely destitute of any means of legal education except as they picked it up in the office of older attorneys. A stir was made about this, after many years

of dissatisfaction, in 1832, and certain private persons formed a society, got property in Chancery Lane, and obtained a charter as "The Council of the Incorporated Law Society." The new association established lectures and classes for the more adequate education of law students desirous of becoming solicitors. This excited the emulation of the Inns of Court, which had charge of the education of the higher branch of the profession, and they, with reviving zeal, appointed professors and readers in certain topics for the would-be barristers.

"Up to that time I suppose no education at all was required?" said Lord Cowper, the chairman of the commission. "None whatever," replied Mr. Crackanthorpe. "There was no sort of lectures which could be attended, and at which the attendance could be certified; in point of fact all that was required was that a man should be a respectable person, pay his fees, and express a wish that he should be called to the bar." Mr. Anstie: "That would be to what date?" Mr. Crackanthorpe replied: "The first compulsory examination was not till 1859, and that was only a preliminary compulsory examination for admission to an Inn of Court. The first compulsory final examination for call to the bar was not till 1872."

It should be remarked that no Inn can call a person to the bar until he has been a member of that society five years, except that certain degrees from the greater English and Irish Universities shorten the period, and there are certain exceptions as to solicitors.

Sergeant Robbins, in his published reminiscences called "The Bench and Bar," says he entered the Middle Temple as a student in 1833, and the examination lasted about a minute and a half, and consisted of one or two questions in Latin or general literature, put in the perfunctory style in which one asks a passing acquaintance after his health. Writing in 1869, he says he never knew any applicant plucked on this examination. He says, after paying £100 fees and giving security for keeping the rules of the Inn, you had merely to keep twelve terms; that a term was three or four weeks, and in the middle was what was called grand week. To keep the term you must dine once in grand week and once in each half week at the Inn. Students literally were required merely to eat their way to the bar.

Each Inn acted separately in matters of legal education until a Parliamentary committee investigated this in 1846, and reported

that it would be well that the Inns should co-operate and establish a joint system of education. For the first time in their history, as far as known, alarmed at the report, they appointed a joint committee, which reported that the four Inns should act in concert "in the joint establishment and maintenance of a uniform system of legal education of students before admission to the bar." They also provided for a standing committee of eight benchers on legal education, and Sir Richard Bethel, afterwards Lord Chancellor Westbury, called the boldest judge who ever sat on the bench, was made its chairman.

In 1855 the Inns of Court were investigated further by a Royal Commission, which reported rather in favor of their incorporation, a threat which seems always full of terrors for them. This produced a great effect. The Inns appointed a committee, which sat four years, and finally adopted the suggestion of the Royal Commission and reported that it was expedient that there should be a compulsory examination of students previous to being called to the bar. In that year the Inns first made an examination for admission to begin studying compulsory, requiring, as is still the rule, students to be examined in the English and Latin languages and English history; but not until fourteen years later would they adopt the recommendation of their own committee, that there be a compulsory examination for call to the bar.

Finally, a legal education association was organized, July 6th, 1870, and Sir Roundel Palmer was made its first president. He and his allies sought for a great teaching faculty of law, whose instruction should be open to all who desired to know the law of the land, whether intending to become lawyers or not. The whole movement was brought on by an able paper from Mr. Jevons, of Liverpool, pointing out the shameful neglect of legal education in England, and this one man won the interest of Sir Roundel and a great number of the more enlightened lawyers. The plans were strongly opposed. A majority of the council of the Incorporated Law Society (the solicitors' organization) hesitated to give their adherence to a scheme for education in law open to all alike, but a minority of the council gave the plan their warm support, and, appealing to the general meeting of the society, that body, after a debate of two days, by a majority of two to one, supported Sir Roundel's enlightened and liberal project. His association met with a committee of the Inns for conference, and they promptly disagreed. Thereupon, July 11,

1871, Sir Roundel, undeterred by the frowning benchers, and seconded by Mr. Osborne Morgan, gallantly moved in the House of Commons "That in the opinion of this House it is desirable that a general school of law should be established in the metropolis, in the government of which the different bodies of the legal profession in England may be suitably represented, and that after the establishment thereof no person should be admitted to practice in any branch of the legal profession without a certificate of proficiency in the study of the law, granted after proper examination by such general school of law." It went no further during that session, but the society printed and circulated reasons in its favor.

February 1, 1872, a deputation appointed by the executive committee of the society waited upon Mr. Gladstone, then Prime Minister, to ask government support for the measure. The deputation was headed by Sir Roundel Palmer, and included Sir Edward Ryan, Vice Chancellor Wickens, Mr. Justice Quain, Lord Hobhouse, Mr. Justice Mathews, Baron Pollock, Sir Henry Maine, Professor Abdy, Professor Bryce, and others; but Mr. Gladstone, though expressing his sense of its importance, doubted whether the pledges of the government already made would enable them to spare the time requisite for inquiry which must be made before they could commit themselves to any decided course of action. A most characteristic reply from the "old Parliamentary hand."

However, on March 1, Sir Roundel again moved his resolution, slightly modified so as to include in the advantages of the proposed school of law, not only persons intending to practise in any branch of the legal profession, but as well "all other subjects of Her Majesty who may resort thereto." Petitions in its support were presented signed by about 400 members of the bar, 18 of them Queen's Counsel and benchers of the Inns, and by about 7,000 out of the 10,000 solicitors then practising. Members of the government complimented Sir Roundel for his zeal, but wished to hear from the Inns of Court. Mr. Gladstone said he had fully mortgaged the time of the House, and intimated that the government could not give its support. Sir Roundel determined to take the sense of the House notwithstanding, and got 103 votes for his motion, but it was rejected by a majority of 13, the government voting against it in a body.

Death and promotion are equally fatal to reformers. Sir Roundel almost immediately thereafter was raised to the Woolsack, becoming Lord Chancellor under the title of Lord Selborne, and was

thus compelled to resign his presidency. Mr. Amphlett, Q. C., was chosen in succession, and he too was taken from the society by elevation to the bench. Mr. Justice Quain died, and the organization lost its vitality and ceased to hold meetings.

Lord Selborne, having on a change of ministry retired from the Chancellorship, two years later returned to the charge with a bill for incorporating the Inns of Court and establishing a general school of law. The bill went to a second reading and was withdrawn. The success of a reformer does not so often consist in carrying his particular bill or resolution, as in compelling or inducing even the enemies of reform to come to its standards.

The Inns, after long opposition, had come, as we have seen, in 1872, to require examination for call to the bar.

Mr. Crackanthorpe was asked whether, after enforced examinations, there were any differences in the ability of those who came to the bar, and frankly replied, "I cannot say that there were. Ability comes to the top at the bar in very curious ways, and it is impossible often to say why a man succeeds at the bar." He was of the opinion, however, that the examinations had an effect in keeping out grossly ignorant people.

There was a lull in the agitation for better legal education until 1891. Then Lord Justice Lindley and Mr. Justice Mathews, of the Council of Legal Education, interested themselves in effecting a reform within the Inns, by which the Inns appointed an increased number of readers, or professors and assistants. Instead of five professors at £1,000 a year, there were six full professors at £500 and four assistant readers at £350 a year.

The readers were elected for terms of three years, and were often re-elected. They were many of them eminent persons, having other employment, as Professor Bryce, Mr. Frederick Harrison, and Sir Frederick Pollock. Attendance of students at the lectures is not compulsory, but it aids to pass the examinations and to fit for practice, and is therefore desirable.

Mr. Crackanthorpe reported that at the previous term 92 students applied to pass; 57 were passed, and 35 rejected. Nothing is asked in the examinations that is not taught at the lectures. Many of the students are attending in barristers' chambers, at the same time paying a hundred guineas for a year's course there. They attend lectures and classes about two hours a day. No one is allowed to attend except he is a member of an Inn of Court, and thus those who seek a knowledge of law as a part of a liberal edu-

cation, and not for professional purposes, are in the main unjustly excluded. Even a solicitor who wishes to take the lectures with a view to becoming a barrister was excluded, as not a member of any Inn of Court.

In considering the education of the solicitors, we must briefly trace the history of the incorporated Law Society already mentioned. It is a great association of solicitors for mutual benefit, incorporated in 1831. In 1836 they began to examine candidates for admission as solicitors. This power to examine and admit was in the judges, but they used the society to aid them. In 1877, however, by act of Parliament, power was given the society to examine for itself, and now, with the assistance of a Master of the Supreme Court, it has entire control. If the society refuses a certificate to any candidate, he may appeal to the Master of the Rolls. There are four examinations. First, a preliminary one in general knowledge, including Latin and two foreign languages. These are held at various points about the country, and are substantially equivalent to an entrance examination, or "little go," at the Universities,—rather more than equal was the testimony. Various university degrees exempt the candidate from this preliminary. Secondly, there is an intermediate examination in an assigned part of Stephen's Commentaries. Thirdly, a final examination as a test of practical skill, not from books, but upon law generally. Fourthly, on the day but one after the finals, examinations for honors are held, which are entirely voluntary. Roughly speaking, about two thirds of the applicants pass the preliminary and the rest are postponed; about four fifths pass the intermediate; as Mr. Pennington, the president of the society, testified, "an artied clerk, with any reasonable amount of attention, ought to be able to pass that examination." And the finals, which are the most important, are passed again by about two thirds of those who come up to them, so that, of a given lot starting together, only about one third get through and win the certificates for admission in course.

Up to October, 1891, the society maintained a system of lectures and classes for students going up for their finals. The attendance on these declined so far that at last there were only thirteen subscribers for this course, and it was abandoned at the time mentioned.

It was found that the students preferred privately to hire and depend upon tutors or coaches who gave private instruction, and the society concluded to furnish as near as might be the same form

of assistance. These tutors seem really to be lecturers, not unlike our own; but instead of giving in the English manner a brief course, and then abandoning the student for months, they give far more continuous and systematic instruction.

The lecturers were highly capable, and often distinguished men; but, as Mr. Pennington said, a tutor taking a student in hand for three years could give much more assistance than a lecturer who sees a man for a few weeks at various intervals during the year.

Tuition begins with a year's instruction, which may be by correspondence, consisting of twenty-four fortnightly letters. The students are required to serve five years as articled clerks, but a university degree reduces the time to three years. Most such clerks begin at seventeen years of age, and are admitted at twenty-two. The articled clerks serve in solicitors' offices from ten A. M. to six P. M. commonly, with a short interval for lunch, and they pay a premium of from three to five hundred guineas each to the solicitor with whom they are articled.

I have no later figures; but in 1892 Mr. Longbourne, formerly one of the Secretaries of the Legal Education Association, testified that there were about 15,000 solicitors practising in England and Wales, nearly 7,000 of them in London. There were about 3,000 of these articled clerks, and during the preceding year 639 students passed their final examinations and joined the ranks of the solicitors. Evidently the instruction afforded by the new method of the Incorporated Law Society does not do away with the need of private tutoring, for certain London solicitors fill a page of the London Law Times with the advertisement of the advantages which they afford to students seeking to become solicitors, and append lists showing that for a series of years many, and during the last year substantially all, of the considerable honors and prizes of the examinations have been won by their students.

The project of Lord Selborne was in a measure revived in connection with the Royal Commission, headed by Earl Cowper, appointed to consider the framing of a charter for the proposed Gresham University in London which should unite and co-ordinate all great interests and functions having to do with higher education in England in one all-inclusive university teaching every branch of human learning. The commission took the testimony of many eminent persons — lawyers, teachers, and judges — on the subject of legal education in England, and on the continent of Europe and in this country. The French and German schools were com-

mended for the teaching of administrative law and of political science; but the most unqualified praise seems reserved for the Law Schools of this country in the matter of preparation for the bar. The Right Honorable James Bryce testified that the plan of systematic teaching of law has proved so successful in the United States that he advocates it positively in England.

Mr. Dicey, Vinerian Professor at Oxford and Queen's Counsel, testified that "the Law Schools in America possess a reputation which is unlike anything which is possessed by any law school here."

Sir Frederick Pollock, Corpus Christi Professor of Jurisprudence at Oxford, declared that "the American Law Schools have convinced the profession there that they do teach law in an efficient way,—in a way which makes a man not only a better instructed lawyer, but a better practical lawyer." There was no dissent moreover from this concurring commendation of our Law Schools.

Finally, the Commission, after two years of investigation and reflection, reported, in 1894, "that the time has now arrived when a more complete system of legal education may be and ought to be established in London, that this is only possible with the concurrence of the Inns of Court, that on reasonable conditions the Inns of Court are likely to co-operate and to open their lectures to the public, reserving to themselves the entire control over the call to the bar, but being ready to accept as a test of theoretical knowledge the degree or certificate of the University." The Commission therefore propose that the Inns of Court be represented on the governing body of the University. Also that the Incorporated Law Society be represented on the same body. It also recommends that the Law Faculty be constituted with a view to persons studying for either branch of the profession of the law in Great Britain, India, or the Colonies, and equally for persons engaging in the public service, civil or diplomatic, also for persons engaged or about to engage in public life in the administration of public law as members of Parliament, magistrates, etc. Also for persons applying themselves to work of investigation or research in any of the subjects of the faculty. This noble and comprehensive plan, as nearly as can be learned, is being carried forward by the slow and cautious methods which our "kin beyond sea" always prefer.

It is privately anticipated that Mr. Crackanthorpe will be called on to aid in shaping the final action which will insure to England

a more adequate and a more free and open system of legal education. The Commission have outlined a course of legal studies deemed desirable, and prepared a statutory commission for carrying out the scheme submitted. It is believed that Mr. Crackanthorpe will be invited to serve on this commission.

In the mean time the Inns of Court keep on their slightly modernized methods, and the only path to the bar is through their doors. November 17th, 1896, was call night of the Michaelmas term for all four Inns, and sixty-four students were called to the bar, as against sixty called at the same time last year.

Charles Noble Gregory.

MADISON, WIS., 1897.